173 (3)

No. 10-0321

In the Supreme Court of the United States

Guy W. Parker d/b/a/ Parker International,
Petitioner,

v.

Michael B. Donley, Secretary of the Air Force.
Respondent.

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Federal Circuit

SUPPLEMENTAL BRIEF SECOND INTERVENING MATTER PETITION FOR WRIT OF CERTIORARI

Guy W. Parker
Contract FA8621-04-D-6250
14924 Conchos Dr.
Poway CA 92064
858-486-6469

THE AIR FORCE ASKS THE TRIBUNALS

QUESTION 1: CDA § 6 (A) CO OF RECORD

– Is a Pub. L. 95-563 amended (CDA) contractor bound by CDA § 6 and 48 C.F.R. § 4.101 to only recognize the agency contracting officer whose name is typed and signed on the contract as the agency Contracting Officer of Record (CO). Is a SF30 bilateral signed agreement or bilaterally agreed unilateral agreement required to install a new agency CO of Record? [CDA is defined as Pub. L. 95-563 amended]

QUESTION 2: CDA § 6 (D-E) ADR REQUESTS

– Does Pub. L. 95-563 amended (CDA) § 6 (d)-(e) require a written answer upon contractor request to the CDA § 6 48 C.F.R. § 4.101 Contracting Officer of Record (CO)? When a contract term states "at the request of either party, delays impacting the program or contractor shall be resolved by ADR" is ADR mandatory on request of either party? When the 48 C.F.R. § 4.101 CO provides no Pub. L. 95-563 amended (CDA) § 6 (e) written ADR answer is statutory law violated and the contract breached?

QUESTION 3: DECLARATORY JUDGMENT

– What statute(s) provides statutory 1978 92 Stat. 2383 Armed Services Board of Contract Appeals (ASBCA) and Court of Federal Claims (USCOFC) Pub. L. 95-563 amended (CDA) declaratory judgment jurisdiction, injunctive relief jurisdiction, and declaratory judgment authority to change the CDA § 6(a) 48 C.F.R. § 4.101 CO of Record?

QUESTION 4: CONGRESSIONAL BREACH

– Why does a contractor have to wait until after the performance period to file a Pub. L. 109-364 § 832 120 Stat. 2331 Congressional breach claim?

RULE 14.1(b) STATEMENT PARTIES

Guy W. Parker — Petitioner
14924 Conchos Dr.
Poway CA 92064

Michael B. Donley — Respondent
1670 Air Force Pentagon
Washington, DC 20330

INTERESTED PARTIES

AFMC/PKPB Michael L. Grove agrees he is the AFMC/ASC/YW 48 C.F.R. § 4.101 CO of Record for this ASC/YW Predator Unmanned Air Vehicle Contract FA8621-04-D-6250, he was moved to HQ in 2005, and ASC/YW was decommissioned in 2005.

AFMC/ASC Patsy J. Reeves agrees she is the HCA Director of Contracting and is the 48 C.F.R. § 1.6 CO of Authority for Contract FA8621-04-D-6250.

ASC/677th Betty W. Clingerman agrees she was the F33657-01-D-2077 0007 competing contract delivery order officer, does not hold an AFMC/ASC issued SF1402, has a blanked SES/DCS organization SF1402, and states in her notarized document she is the CO by "self assignment" "implied consent".

Alan C. Gaudette agrees he was the CO representing AFMC sole source contracts 1998–2001 upon which follow-on FA8621-04-D-6250 is based.

RULE 29.6 STATEMENT
CORPORATE DISCLOSURE STATEMENT

The real petitioner's name is in the caption, a California citizen sole proprietor not a corporation. The agency disputes well settled plain language CDA § 6 (a) law, 48 C.F.R. § 1.6, § 4.101 regulations, and contract terms of this five-year negotiated sole source contract follow-on, not closed, spanning 1998-2008.

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SUPPLEMENTAL BRIEF
SECOND INTERVENING MATTER

Rule 15; Supplemental Briefs: "Any party may file a supplemental brief at any time while a petition for a writ of certiorari is pending, calling attention to new cases, new legislation, or other intervening matter not available at the time of the party's last filing."

Due to the extraordinary importance of the four questions presented to all government contractors, an intervening matter not available at the time of the party's last filing is provided herein supporting reasons why this petition should be granted.

A malformed, misspelled, unsigned, and not served Rule 15 "waiver of response" has caused premature distribution of Case 10-0321. E1 The name of the person this court assumed issued the waiver is misspelled. E1 The respondent's title is incorrect. E1 The waiver was not sent to the petitioner by the respondent in accord with Supreme Court Rule 15 Waiver Form E4 with an affidavit or certificate of service. Please refer to the Supreme Court of the United States Waiver Form. E4 The malformed waiver E1 was mailed by USPS mail by a Supreme Court of the United States law clerk. No such implied consent is provided.

P. L. 95-563 amended (CDA) § 605 (d)-(e) (41 U.S.C. § 605 (d)-(e) not enacted into positive law) and Contract Attachment 7 ¶ 1.1 Conflict Resolution provides Alternative Dispute Resolution (ADR) on request by this contractor. In accord with CDA § 605 (d)-(e) and Contract FA8621-04-D-6250 Attachment 7 ¶ 1.1 E3 ADR is requested by this contractor within the jurisdiction of the Supreme Court of the United States. E7 & E8

PROPOSED ADR SETTLEMENT

In accord with P. L. 95-563 amended (CDA) § 605 (d)-(e) (41 U.S.C. § 605 (d)-(e) not enacted into positive law) and Contract Attachment 7 ¶ 1.1 Conflict Resolution [E3] this contractor requests Alternative Dispute Resolution (ADR) within the jurisdiction of this Supreme Court:

1) The agency affirms this contractor owns the hardware system data-rights for MTT 001-008 as stated in the RFP [E5] and Sole-Source Justification [E6] incorporated in Clause H101. [E2]
2) The agency affirms breach of the contract has occurred. In accord with CDA § 605 (d)-(e) and Contract Attachment 7 § 1.1 Conflict Resolution [E3] this contractor requests ADR.
3) The agency agrees that ADR is mandatory in accord with the mutually negotiated FA8621-04-D-6250 Contract Attachment 7 Paragraph 1.1 Conflict Resolution on request of either party.
4) The agency agrees it has been using the hardware system data-rights unlicensed since 2007. The agency agrees it does not own the data-rights. See A13 P. 8, A21 P. 9, A22 P. 10
5) The agency agrees to pay the balance of the Firm Fixed Price contract $3,000,000 face value.
6) The agency agrees to pay the equivalent of one year hardware system data-rights licensing every year past 2008 until contract close out.

The contractor will accept a settlement under these terms to be specified in a termination for convenience as prescribed in FAR. This contractor will return all GFE hardware currently in possession in accord with the contract terms. The contractor agrees to offer the agency an opportunity to negotiate for the system data rights per contract.

ADMINISTRATION OF ADR SETTLEMENT

Donley, his counsel, or DCMA is requested to provide an answer to this Contract Attachment 7 ¶ 1.1 ADR request before the pending cert. decision.

No signed express waiver of response was received from the respondent or counsel. An unsigned malformed not served waiver was improperly docketed by a Supreme Court law clerk. Case 10-0321 was prematurely distributed.

Respondent Donley is the contracting officer of authority. The Respondent, his counsel, or DCMA is required to respond to this CDA amended § 6 (e)) and/or Contract Attachment 7 ¶ 1.1 ADR request:

> **41 U.S.C. § 605 (e)**: "In any case in which the contracting officer rejects a contractor's request for alternative dispute resolution proceedings, the contracting officer shall provide the contractor with a written explanation, citing one or more of the conditions in section 572 (b) of title 5 or such other specific reasons that alternative dispute resolution procedures are inappropriate for the resolution of this dispute."
>
> **Contract Attachment 7 ¶ 1.1**: "At the request of either party, delays impacting the program or contractor shall be resolved by ADR.
>
> **Rule 15 3**: Any brief in opposition shall be filed within 30 days after the case is placed on the docket, unless the time is extended by the Court or a Justice, or by the Clerk under Rule 30.4.
> **Rule 15 5**: The Clerk will distribute the petition to the Court for its consideration upon receiving an express waiver of the right to file a brief in opposition, or, if no waiver or brief in opposition is filed, upon the expiration of the time allowed for filing.

RELEVANCY TO QUESTION 2

CDA § 6 (d)-(e) requires a written answer upon contractor request to the source of CO of Authority. The mutually negotiated contract terms states "at the request of either party, delays impacting the program or contractor shall be resolved by ADR". In accord with Rule 23 Stays, a stay on the cert. decision is requested.

CONCLUSION

In accord with Rule 15 8 any party may file a supplemental brief at any time while a petition for a writ of certiorari is pending cert. decision. This new matter is the result of legal research on the improper form, service, and docketing of the "waiver". No written or implied consent is provided to summarize the Petition or Briefs without this contractor's review of the summarized document(s). The rules of this court do not provide for summarized documents to determine a decision.

Affirmed this 12OCT2010
by /s/ Guy W. Parker
14924 Conchos Dr. Poway, CA 92064 858-486-6469
Affirmed this 12OCT2010
by /s/ Alan C. Gaudette
Contract FA8621-04-D-6250 ADR Moderator
16241 W. Hearthstone Dr. Surprise, Arizona 85374

State of Arizona County of Maricopa
Subscribed and sworn before me on 10/12/2010 (Date)

(Notary Signature)

LAURA PROKOPEC
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
My Commission Expires
October 12, 2013

ENDNOTES

[E1] See non-complaint docketed unsigned "NEAL KUMAR KA TY AL" waiver for "Secretary of the Air" See A25 P. 11.

[E2] Contract in Clause H101: See A13 P. 8 herein.

[E3] Contract Attachment 7 § 1.1 Conflict Resolution: See A29 P. 11 herein.

[E4] Supreme Court Waiver Form: See A34 P. 13 herein.

[E5] FA862104D6250 Request for Proposal Solicitation: See A22 P. 10 herein.

[E6] FA862104D6250 Sole-Source Justification: See A21 P. 9 herein.

[E7] **Federal Regulation of ADR**: Enacted in 1925, the Federal Arbitration Act (FAA) provides for judicial facilitation of private disputes where the transaction contemplated by the parties involves interstate commerce. The Act provides for contractually-based [E2] compulsory and binding arbitration resulting in an "arbitration award" rather than a court judgment. Once an award is entered it must be confirmed in a court of law and reduced to an enforceable judgment. Any objection to an award must be raised by the losing party within three months, and awards must be confirmed within one year. Under the Act, parties waive their right to an appeal of an award on substantive grounds, even if the parties agree to expanded judicial review in the arbitration agreement. (See *Hall v. Mattell*, 128 S.Ct. 1396 (2008), 48 C.F.R. § 33.2 et al Disputes and Appeals)

[E8] **Alternative Dispute Resolution Act of 1998**: The Act requires that each federal district court implement its own alternative dispute resolution (ADR) programs, providing at least one ADR process to litigants, and requires litigants to consider the use of ADR in all civil cases at an appropriate stage in the case. 28 U.S.C. §§ 651-658 (1998). The Act defines ADR as any process or procedure in which a neutral third party participates to assist in the resolution of issues in controversy. Such processes may include mediation, early neutral evaluation, mini-trial, or voluntary arbitration. It also authorizes district courts to require parties to engage in ADR, although such authority is limited to the processes of mediation and early neutral evaluation. District courts may not compel parties to participate in arbitration, except for in ten courts that retain such authority under an earlier version of the Act.

Other provisions of the Act direct courts to prevent conflicts of interest, protect confidentiality of proceedings, make neutrals available to litigants, and establish qualifications for the type of training and experience required of court-supplied neutrals.

The Act further requires that each district include seven of these requirements in its local rules. This includes (1) authorization to use ADR, (2) implementation of an ADR program (3) a requirement that litigants consider the use of ADR at an appropriate stage in the case, (4) provisions ensuring confidentiality, (5) provisions to establish standards for disqualification, (6) assurances that arbitration is by consent of both parties and (7) procedures for maintaining the confidentiality of an arbitration award from the assigned judge until the termination of the case.

APPENDIX

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The Court Clerk letter 17AUG2010 requested Appendix 8.5" x 11" photo documents found within the ASBCA 56742 Government Rule 4(a) Appeal File
http://www.welaw.org/US/Rule_4B_File.pdf
and ASBCA 56742 Contractor Rule 4(b) Appeal File
http://www.welaw.org/US/Rule_4B_File.pdf
as well as all photo images of court documents be text replaced. The Appendix 8.5" x 11" documents photos and the full set of contract documents is accessible at http://www.welaw.org/US/index.html.

A13: CONTRACT CLAUSE H101

PART I - THE SCHEDULE
SECTION H - SPECIAL CONTRACT REQUIREMENTS

SECTION H FA8621-04-D-6250
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Notice: The following contract clauses pertinent to this section are hereby incorporated in full text:

NOTICE: The following contract clauses pertinent to this section are hereby incorporated in full text:
A. FEDERAL ACQUISITION REGULATION CONTRACT CLAUSES IN FULL TEXT

B. OTHER CONTRACT CLAUSES IN FULL TEXT

H100 INCORPORATION OF SECTION K (OCT 1998)
Section K of the solicitation is hereby incorporated by reference.

H101 SOLICITATION NUMBER (APR 1998)
Solicitation Number FA8621-04-D-6250

See http://www.welaw.org/US/A13.pdf

A21: FA8621-04-D-6250 SOLE SOURCE J&A
(ASBCA 56742 APPEAL FILE PAGES 429-432)

The Office of the Clerk letter 17AUG2010 requested this document found within ASBCA 56742 Contractor Rule 4(B) Appeal File E142 P. 429-432 http://www.welaw.org/US/Rule_4B_File.pdf and at http://www.welaw.org/US/A21.pdf be text replaced. Selected parts are provided herein:

Item	Content
Title	Justification Review Document Contracting Activity: ASC/YWP
Sign	Contract Officer: Michael L. Grove 26NOV03 Chief Engineer: Anthony J. DalSAasso Local Legal: Bridget E. Lyons Buying Office: Charles W. Cooplis, Jr. Advocate: Milton C. Ross
¶ 1	This justification for Other than Full and Open Competition is being executed by ASC/YWP a branch of ASC's Training System Product Group on behalf of ACC TRSS/TSF. Funding will be provided under AF Form 616 using 3400 (Operation and Maintenance) funds.
¶ 3	The Predator MTTs are currently installed at ISAFAF, Nellis AFB, and at Det 1 ACC/TRSS Luke AFB; they were developed though mixed government and private commercial funding. ACC/TRSS Det 1, Luke AFB, manufactured and maintains the mechanical and electrical components of the eight (8) MTTs. Parker International (Poway, CA) initially developed the MTT, providing the system design, system software, test, verification, and training dataset development. ....

A22: FA8621-04-D-6250 H101 SOLICITATION

The Office of the Clerk letter 17AUG2010 requested this Appendix A22 8.5" x 11" document found within ASBCA 56742 Contractor Rule 4(b) Appeal File on P. 28 http://www.welaw.org/US/Rule_4B_File.pdf and at http://www.welaw.org/US/A22.pdf be removed. Incorporated into Contract Clause H101, partial contents are extracted and placed here:

> PIXS – Preaward Information eXchange System
> 04D6250 – Predator
> Last Update 11/7/2003 8:57:57 AM .....

The government does not own the data rights for the system and, therefore, cannot compete this effort. The contract to be awarded will cite FAR 6.302-1, only one reasonable source and no other supplies or services will satisfy agency requirements, as its authority and be supported by and approved Justification and Approval in which Parker International is specified as the sole source for this requirement. ....

Responses should be sent to: ASC/YWP, 2300 D Street, Wright-Patterson AFB. OH 45433-7249, Attn: Michael L. Grove. Any questions should be referred to the above Michael L. Grove, the Contracting Officer at 937-255-7414 ext. 3396, email @wpafb.af.mil. ....

4D6250 is an Aeronautical Systems Center (ASC) program. The current status is Pre-Solicitation and it is a Category A- Research and Development program. Solicitation No. FA8621-04-D6250 Response Date: DEC 08 03

See http://www.welaw.org/US/A22.pdf

A25: WAIVER OF RESPONSE DOCKETED

IN THE SUPREME COURT OF THE UNITED STATES

PARKER, GUY W., DBA PARKER INTERNATIONAL Petitioner

vs.

MICHAEL B. DONLEY, SECRETARY OF THE AIR

[The word "FORCE" is not on document]
[The word respondent is not on document]

WAIVER

No: 10-0321

The Government hereby waives its right to file a response to the petition in this case, unless requested to do so by the Court.

[No signature is on this document]
[There are two blanks inserted in "KA TY AL"]

NEAL KUMAR KA TY AL
Acting Solicitor General
Counsel of Record
September 29, 2010
cc: GUY W. PARKER
14924 CONCHS DR.
POWAY, CA 92064

Sent by the Supreme Court Clerk USPS Mail 09/29/2010. Received by USPS Mail at Parker International 10/02/2010

[This document is not a WAIVER for respondent Secretary of the Air Force filed by NEAL KUMAR KATYAL]. No implied consent is provided.

See http://www.welaw.org/US/A25.pdf

A29: CONTRACT CONFLICT RESOLUTION

FA8621-04-D-6250 ATTACHMENT 7 1.1 Conflict Resolution: "... Without the MTTs flight training costs would increase an estimated $1.5 - 2.0M per year. Additionally, the operational duty day at Indian Springs AFAF would increase appreciably, requiring expanded transportation and base operations support, again at increased cost. The MTTs were acquired for a fraction of the cost of a traditional simulator acquisition because that was the best the Air Force could afford at the time. ... Reasonable efforts should be made to resolve controversies through ADR prior to the submission of a claim. *At the request of either party, delays impacting the program or contractor shall be resolved by ADR*.

See http://www.welaw.org/US/Attachment_007.pdf

A34: SUPREME COURT WAIVER FORM

WAIVER

SUPREME COURT OF THE UNITED STATES

Supreme Court Case No. 10-0321

Guy W. Parker d/b/a/ Parker International
(Petitioner)

v.

Michael B. Donley, Secretary of the Air Force.
(Respondent)

I DO NOT INTEND TO FILE A RESPONSE to the petition for a writ of certiorari unless one is requested by the Court.

....

I certify that I am a member of the Bar of the Supreme Court of the United States (Please explain if your name has changed since your admission):

Signature
Date:
(Type or print) Name
▯ Mr. ▯ Ms. ▯ Mrs. ▯ Miss
Firm
Address
City & State Zip
Phone

A copy of this form must be sent to petitioner's counsel or to petitioner if pro se. Please indicate below the name(s) of the recipient(s) of a copy of this form. No additional certificate of service is required. Cc:

See http://www.welaw.org/US/A34.pdf